

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KIMBERLY WHEELER,

Plaintiff,

Case No. 13-cv-15210

Hon. Matthew F. Leitman

v.

MICHAEL TOCARCHICK *et al.*,

Defendants.

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**ORDER (1) GRANTING PLAINTIFF'S MOTION TO STAY PROCEEDINGS  
(ECF #80) AND (2) DENYING DEFENDANTS' MOTION FOR  
CERTIFICATION THAT PLAINTIFF'S INTERLOCUTORY APPEAL IS  
FRIVOLOUS (ECF #84)**

In this action, Plaintiff Kimberly Wheeler ("Wheeler") seeks damages for alleged wrongdoing arising out of her arrest for disorderly conduct on March 8, 2011. (*See* Compl., ECF #1.) On December 7, 2016, Defendants moved for summary judgment on all counts of Wheeler's Complaint. (*See* ECF #67.) Wheeler also moved for summary judgment on her claims that arose from her allegedly unlawful arrest and her post-arrest detention. (*See* ECF #66.) The Court held a hearing on both motions on May 4, 2016.

On July 6, 2016, the Court issued an Opinion and Order in which it (1) denied Wheeler's motion for summary judgment and (2) granted in part and denied in part

Defendants' motion (the "Opinion and Order"). (*See* ECF #75.) Based on the Court's resolution of the two motions, the following claims remain in this action for trial:

- Wheeler's Fourth Amendment claims for unlawful arrest against Defendants Michael Tocarchick ("Tocarchick") and Gerald Parks ("Parks");
- Wheeler's Fourth Amendment excessive force and state law assault and battery claims against Defendants Parks and Michael Chatterson ("Chatterson");
- Wheeler's Fourth Amendment and state law false imprisonment claims against Defendant Tocarchick.
- Wheeler's claim for intentional infliction of emotional distress against Defendants Tocarchick, Parks, and Chatterson.

(*Id.* at 28, Pg. ID 1709.)

Defendants Tocarchick, Parks, and Chatterson filed an interlocutory appeal of the Opinion and Order on August 1, 2016. (*See* Notice of Appeal, ECF #76.) On August 8, 2016, these Defendants moved to stay all proceedings in this Court while they appealed the Opinion and Order (the "Motion to Stay"). (*See* ECF #80.) Wheeler opposes the Motion to Stay. She has both filed a brief opposing the Motion to Stay (*see* ECF #81) and filed her own motion in which she asks the Court for a certification that Defendants' appeal is frivolous (the "Certification Motion") (*see* ECF #84).

The Court is not yet persuaded that it has authority to grant Wheeler the certification she seeks. As Defendants point out in their response to the Certification Motion, the Sixth Circuit has not recognized that district courts have such power. *See McNeal v. Kott*, 590 Fed. App'x 566, 569 (6th Cir. 2014) (noting only that "a district

court may (or may not) have authority to issue an order labeling an interlocutory appeal as frivolous after the government defendants file a notice of appeal”). Moreover, the Court is not convinced that the arguments Defendants intend to present in their appeal are so patently without merit as to be considered frivolous.

The Court further believes that a short stay of proceedings while Defendants’ pursue their appeal is warranted. Such a stay will promote judicial economy and will not cause substantial prejudice to Wheeler under the circumstances that exist here.

Accordingly, for the reasons stated above, **IT IS HEREBY ORDERED** that (1) Defendants’ Motion to Stay (ECF #80) is **GRANTED** and (2) Wheeler’s Certification Motion (ECF #84) is **DENIED**. This action shall be **STAYED** pending the Sixth Circuit Court of Appeals’ resolution of Defendants’ appeal.

**IT IS SO ORDERED.**

s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

Dated: October 27, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 27, 2016, by electronic means and/or ordinary mail.

s/Holly A. Monda  
Case Manager  
(313) 234-5113